

MIGRATION RESEARCH LEADERS SYNDICATE
IN SUPPORT OF THE GLOBAL COMPACT ON MIGRATION

Humanitarian Alternative Pathways for Protection for Forced Migrants in Latin America



International Organization for Migration (IOM)

The UN Migration Agency

The opinions expressed in the report are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM). The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

This publication has been issued without formal editing by IOM. Any errors or oversights in this publication are the sole responsibility of the authors.

Suggested citation: Jubilut, L. L. (2017) 'Humanitarian Alternative Pathways for Protection for Forced Migrants in Latin America?', in McAuliffe, M. and M. Klein Solomon (Conveners) (2017) *Ideas to Inform International Cooperation on Safe, Orderly and Regular Migration*, IOM: Geneva.

Publisher: International Organization for Migration
17 route des Morillons
P.O. Box 17
1211 Geneva 19
Switzerland
Tel: + 41 22 717 91 11
Fax: + 41 22 798 61 50
E-mail: hq@iom.int
Internet: www.iom.int

© 2017 International Organization for Migration (IOM)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher.



Humanitarian Alternative Pathways for Protection for Forced Migrants in Latin America

Liliana Lyra Jubilut

Executive summary

In the current “migration crisis” combining States’ interests and migrants’ needs have been challenging, and the availability of legal pathways for migration have been scarce, especially if considering pathways with a humanitarian lens. As migration flows and migrants’ needs, however, do not cease to exist in face of lack of legal humanitarian avenues for migration, it is relevant to assess the existing few initiatives that, at the same time, combine the creation of novel legal pathways for migration and that adopt a humanitarian lens.

In this scenario, Latin America provides examples of some interesting initiatives, as the region has adopted and/or proposed alternatives for forced migrants’ displacement with humanitarian lenses, such as resettlement in solidarity, humanitarian entry visas, humanitarian residency permits, regional residency permits, and regional citizenship.

These Latin American initiatives have been able to benefit forced migrants both from within and outside the region and people fleeing from multiple causes. They have also been, in some cases, expressly based on humanitarian concerns assisting, thus, in untangling the migration narrative from security and economy concerns, with a shift in rhetoric to the human perspective.

Even if there is room for improvement, these initiatives can be seen as good practices, and inspire similar actions by other States. They can also be seen as positive steps in creating legal pathways for migration as well as instruments in expanding protection spaces by adopting a humanitarian lens to migration.

Introduction

The world is said to be facing a “migration crisis” in recent years, with record numbers of migrants¹ (either “voluntary” or forced²), a multiplicity of migration causes and the growth of mixed flows figures³. Dealing with the arrival of increased number of migrants in a way that combines States’ interests and migrants’ needs have been challenging, and the availability of legal pathways for migration have been scarce.

When legal pathways for migration are not in place, migrants’ rights (both as migrants and as human beings) are violated and States miss the opportunity to better integrate this population, avoiding social and economic

1 See, for instance, in relation to 2015, *IOM’s Global Migration Trend Sheet*, available at <http://gmdac.iom.int/global-migration-trends-factsheet>.

2 See, for instance, in relation to 2015 and 2016 and to people fleeing persecution, conflict, generalized violence or human rights violations, UNHCR’s Global Trend Reports (UNHCR. *Global Trends: Forced Displacement in 2015*. Geneva, 2016 and UNHCR. *Global Trends: Forced Displacement in 2016*. Geneva, 2017, respectively), available at www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html and www.unhcr.org/statistics/unhcrstats/5943e8a34/global-trends-forced-displacement-2016.html.

3 See, for instance, The Migration Observatory. 2011. *Mixed Migration: Policy Challenges*, 24 Mar. 2011, available at www.migrationobservatory.ox.ac.uk/resources/primers/mixed-migration-policy-challenges/

issues, as well as to establish instruments of good migration governance. If legal pathways for migration are insufficient, those with a humanitarian lens – that would consider the humanitarian needs of vulnerable (especially forced) migrants and, thus, incorporate a human rights’ perspective to migration governance – are even fewer.

Migration flows and migrants’ needs, however, do not cease to exist in face of lack of legal humanitarian pathways for migration. Hence, it is relevant to assess the existing few initiatives that, at the same time, combine the creation of novel legal avenues for migration and have a humanitarian lens, highlighting their positive aspects⁴ as good practices in migration governance and in unpacking the migration conundrum of enhancing legal (and humanitarian) pathways for forced migrants.

In this scenario, Latin America provides examples of some interesting initiatives⁵ as the region has adopted alternatives for forced migrants’ displacement with humanitarian lenses, such as:

- resettlement in solidarity,
- humanitarian entry visas,
- humanitarian residency permits,
- regional residency permits, and
- regional citizenship.

These alternatives have already benefited persons fleeing situations in Colombia, Haiti and Venezuela (i.e. some of the main migration crisis in the region), as well as people fleeing the conflict in Syria, and could have their positive aspects replicated elsewhere.

Latin American humanitarian initiatives for forced migrants

Resettlement in solidarity

In the 1990s and early 2000s UNHCR established new partnerships to implement resettlement – a traditional durable solution for refugees alongside voluntary repatriation and local integration⁶ – in new countries, establishing in its words “emerging resettlement countries”⁷. This initiative included Latin America, where pilot projects were implemented. Brazil, for instance, started its current resettlement program with the arrival of Afghans in 2002.

In 2004 the practice of resettlement in Latin America gained new colors, with a proposed shift in focus from burden-sharing to responsibility-sharing and a regional approach to it. Latin America has a regional regime for refugees based on the Cartagena Declaration⁸ – a 1984 document that has been supported by the UN and the Organization of American States – that includes gross violations of human rights as a ground for the recognition of refugee status. Every 10 years since the adoption of the Cartagena Declaration, the States of the region meet and adopt follow-up documents to tackle forced migration challenges in Latin America. In 2004, in the celebration of the 20th anniversary of the Cartagena Declaration, the Mexico Declaration and Plan

4 As the goal of this paper is to point out good practices in humanitarian alternatives for forced migration, in an effort to inspire similar approaches elsewhere, it will focus only on the positive aspects of the practices that it narrates.

5 Latin America initiatives for the protection of forced migrants have been praised. See, for instance. Grandi, F. 2017. Foreword: Regional solidarity and commitment to protection in Latin America and the Caribbean, *Forced Migration Review* 56: 4-5.

6 See: www.unhcr.org/solutions.html

7 See, for instance, UNHCR. New Directions for Resettlement Policy and Practice. 14 Jun. 2001. Available at www.refworld.org/docid/3da1b32b2.html

8 Available at www.unhcr.org/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html

of Action⁹ was adopted¹⁰. In this document, Latin America adopted resettlement in solidarity as a regional new approach to a traditional durable solution for refugees¹¹.

Resettlement in solidarity was established with a view to allow Latin American States to assist with Colombia's refugee crises, showing solidarity both to the refugees that still needed protection albeit being in countries of first asylum and to countries of first asylum receiving large number of refugees. Additionally, it focuses on vulnerable refugees as the preferred candidates for resettlement.

Resettlement in solidarity schemes have been implemented in Brazil, Chile, Argentina, Paraguay and Uruguay so far. Moreover, the regional focus has been expanded to allow for the protection of extra-continental refugees, mainly Palestinians and Syrians.

Albeit benefiting small numbers¹² of a specific group of forced migrants (refugees), resettlement in solidarity can be seen as a Latin American humanitarian legal pathway for migration into the region.

Humanitarian entry visas

Another humanitarian legal pathway for migration in Latin America was established in 2010 in light of the earthquake in Haiti and the environmentally-induced displacement that followed. To facilitate the entry into its territory of Haitians Brazil adopted humanitarian visas for them *in lieu* of traditional tourist visas that were more demanding in terms of requirements.

Humanitarian entry visas were meant to ease entry into the country and not as a way to guaranteeing legal status once in them. However, it was an instrument in facilitating mobility for these forced migrants (in this case environmentally displaced persons), both in term of admissions policies and by making the access route to the host countries safer, and can be seen as a tool in complementary protection.

They can also benefit refugees. This is so given that, in 2013, persons affected by the Syrian conflict started also to be entitled to humanitarian entry visas to Brazil¹³ as a way to facilitate their coming to the country. It is relevant to note that even though refugees should not need a visa to enter, in today's world and especially in long-distance and airway travels, visas are required for a person to board means of transportation and, therefore, humanitarian visas can be seen as expanding the protection space for forced migrants.

Also in the region, Argentina has established a similar program of humanitarian entry visas for Syrians.

Humanitarian residency permits

In light of humanitarian crisis in the region, Latin American States also developed the practice of granting humanitarian residency permits: in this instance, not as a way to entering their territories but as a means of legal stay within them.

This practice has benefited, for instance, Haitians and Venezuelans and, therefore, is not based on a specific cause of migration but rather on the humanitarian character of the displacement.

Each State that has adopted this legal pathway for migration has created its own regulation and criterion for the humanitarian residency agreements, but, due to the fact that this has been a practice embraced by more than one State in the region, it can be regarded as a Latin American attitude toward humanitarian migration.

9 Available at www.refworld.org/docid/424bf6914.html

10 It was adopted by 20 States: Argentina, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.

11 Jubilut, L. L. & Carneiro, W. P. 2011. "Resettlement in Solidarity: A New Regional Approach Towards a more Humane Durable Solution". *Refugee Survey Quarterly* 3(1): 63-86.

12 In its first 10 years (2004-2014) a little over 1500 persons were resettled in the region (Ruiz, Hiram. 2015. *Evaluation of Resettlement Programmes in Argentina, Brazil, Chile, Paraguay and Uruguay*. Geneva: UNHCR).

13 For more on Brazil's humanitarian entry visas see: Jubilut, L. L. & Sombra, C. A & Madureira, A. de L. 2016. "Humanitarian Visas: Building on Brazil's experience", *Forced Migration Review* 53: 76-78.

It needs to be highlighted, though, that the best use of humanitarian residency permits would be as a form of complementary protection (i.e. to forced migrants that fall outside the scope of the international refugee regime)¹⁴ and that they should not be used as a way to diminish States' responsibilities towards refugees.

Regional residency permits

South America counts on with a few regional organizations among which is MERCOSUR, an economic organization that aims to establish a free market among its Members¹⁵. Albeit primarily focused on trade issues, MERCOSUR has adopted two agreements on residency permits¹⁶ that can be seen as new legal pathways for migration among its Members.

These agreements allow for nationals of Argentina, Brazil, Uruguay, Paraguay, Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela to live and work in another State member of MERCOSUR for two years. The process to obtain the permits are less bureaucratic than the general rules with the only requirements being proof of nationality and of lack of a criminal record.

This initiative is not presented by States as having a humanitarian or human rights basis but it does allow for new pathways for migration among nationals of MERCOSUR's States, and given some forced migration scenarios in the region, can be seen as having humanitarian results.

Regional citizenship

Another South America regional organization is UNASUR (Union of South American Nations), which has developed a proposal for regional citizenship. This still not implemented proposal is based on freedom of movement within South America, with gradual recognition of rights (civil, political, economic and social), leading up to full citizenship¹⁷.

This initiative can create a new legal pathway for migration for South Americans within the region, based on the implementation of human rights, and as in the case of the MERCOSUR residency permits, can have humanitarian results also benefiting forced migrants.

Can these practices be “exported”?

There are 5 main reasons (based on why States could find them palatable to adopt, while, at the same time, expanding the humanitarian protection space) for which one should think that these Latin American practices can be exported. They are:

1. as they are tailored to forced migrants they benefit specific groups of migrants and rely on the humanitarian rhetoric as their basis, thus having a particular scope of protection
2. being based on humanitarianism they can aid in enhancing States' soft power, hence providing an extra incentive for their adoption apart from their benefit for forced migrants
3. as they can be *ad hoc* practices they speak to States' control of migration governance in their territories (as States can scale them up or down, can design them respecting their national practices and legal systems, and can tailor them to specific groups according to their interests), while, in practice, expanding the humanitarian protection space

14 For more on complementary protection see: Manda, R. 2005. “Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection)”. *Legal and Protection Policy Research Series*. Geneva: UNHCR.

15 All States of South America belong to MERCOSUL, either as Members (Argentina, Brazil, Paraguay and Uruguay) or as Associated States (Bolivia, Chile, Colombia, Ecuador, Guiana, Peru and Suriname). Venezuela status in the Organization has been suspended.

16 The agreements are: *Acordo sobre Residência para Nacionais dos Estados Partes do MERCOSUL* and *Acordo sobre Residência para Nacionais dos Estados Partes do MERCOSUL, Bolívia e Chile*, to which the other States have also adhere (so now the agreements are known as *Acordo sobre Residência do MERCOSUL e Associados*).

17 For more on this see: Villareal Villamar, M. C. Ciudadanía Suramericana. “La Apuesta por una Ciudadanía Común en América del Sur. Entrevista con Jaques Ramírez”, *Latin America: integración & desarrollo* 2 (7): 28 – 29.

4. the practices that are of a complementary protection nature bring along forms of protection that are more temporary in nature than refugee status and benefit other migrants than refugees
5. they were created as regional approaches and have benefited mainly (but not only) forced migrants from within the region, and as such may be an incentive to other regions to tackle their own forced migration crisis with regional humanitarian initiatives.

Conclusion

Latin America has created humanitarian initiatives that can provide legal pathways for migration, especially benefiting forced migrants and refugees.

These practices were adopted based on regional initiatives stemming from the Cartagena Declaration or regional organizations, on existing ties between the involved countries and on human rights and/or humanitarian concerns. Some have been adopted collectively by a group of States, while others are national practices (albeit in some cases adopted by more than one State). Some have similar proposals in other regions of the globe, while others are peculiar to Latin America.

The Latin American initiatives have been able to benefit forced migrants both from within and outside the region and people fleeing from multiple causes (from natural disasters to war and complex political scenarios). They have also been, in some cases, expressly based on humanitarian concerns assisting, thus, in untangling the migration narrative from security and economy concerns, with a shift in rhetoric.

Even if – as in all humanitarian practices – there is room for improvement, these initiatives can be seen as good practices and inspire similar actions by other States – either individually or through regional arrangements. These humanitarian alternatives for migration crisis in Latin America can be seen as positive steps in creating legal pathways for migration as well as instruments in expanding protection spaces by adopting a humanitarian lens to migration.

Recommendations

- Legal pathways for migration need to be created, especially for forced migrants, as a way to both protect migrants' rights and create instruments of good governance of migration for States
- A humanitarian lens should be adopted in creating legal pathways for migration. This would shift the migration narrative to benefiting the needs of forced migrants and, at the same time, enhance the humanitarian protection space
- The humanitarian alternatives for migration adopted in Latin America (resettlement in solidarity, humanitarian entry visas, humanitarian residency permits, regional residency permits and regional citizenship) can be seen as mainly good practices and should be replicated elsewhere
- These alternatives should be adopted by individual States, regional initiatives and international organizations, with a focus on both regional and global migration crisis

References

- Acosta, D. 2016 "Free Movement in South America: the emergence of an alternative model", *Migration Information Source*, 23 Ago. 2016.
- Grandi, F. 2017. "Foreword: Regional solidarity and commitment to protection in Latin America and the Caribbean", *Forced Migration Review* 56: 4-5.
- Harley, T. 2014. "Regional Cooperation and Refugee Protection in Latin America: A 'South-South' Approach", *International Journal of Refugee Law* 26 (1): 22-47.
- IRIN. 2015. "Should Europe follow Brazil's example on humanitarian visas?", 29 Oct. 2015.
- Jubilut, L. L. & Carneiro, W. P. 2011. "Resettlement in Solidarity: A New Regional Approach Towards a more Humane Durable Solution". *Refugee Survey Quarterly* 3 (1): 63-86.
- Jubilut, L. L. & Ramos, E. P. 2014. "Regionalism as a Strategic Tool for Dealing with Crisis Migration", *Forced Migration Review* 45: 66-67.
- Jubilut, L. L. & Sombra, C. A & Madureira, A. de L. 2016. "Humanitarian Visas: Building on Brazil's experience", *Forced Migration Review* 53: 76-78.
- Manda, R. 2005. "Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection")", *Legal and Protection Policy Research Series*. Geneva: UNHCR.
- Pacifico, A. P. & Ramos, E. P. 2015. "Humanitarian Asylum for Forced Migrants: the case of Haitians arrival in Brazil". In: Gauci, J-P & Giuffre, M. & Tsourdi, E. (L.) (Eds.). *Exploring the Boundaries of Refugee Law: Current Protection Challenges*, Leiden/Boston, Brill/Nijhoff: 218-239.
- Reed-Hurtado, M. 2013. "The Cartagena Declaration on Refugees and the Protection of People Fleeing Armed Conflict and Other Situations of Violence in Latin America". *Legal and Protection Policy Research Series*. Geneva: UNHCR.
- Ruiz, H. 2015. "Evaluation of Resettlement Programmes in Argentina, Brazil, Chile, Paraguay and Uruguay". Geneva: UNHCR.
- Villareal Villamar, M. C. 2016. "Ciudadanía Suramericana. La Apuesta por una Ciudadanía Común en América del Sur. Entrevista con Jaques Ramírez", *Latin America: integración & desarrollo* 2 (7): 28 – 29.
- White, A. G. 2012. "A Pillar of Protection: Solidarity Resettlement for Refugees in Latin America". *New Issues in Refugee Research* 239, Geneva: UNHCR.



Liliana Lyra Jubilut has a PhD and a Master in International Law by *Universidade de São Paulo* and an LLM in International Legal Studies by NYU School of Law. She was a Visiting Scholar at Columbia Law School and a Visiting Fellow at the Refugee Law Initiative (University of London). She is a Professor of the Post-Graduate Program in Law at *Universidade Católica de Santos*, where she coordinates the Research Group “*Direitos Humanos e Vulnerabilidades*” and the UNHCR Sérgio Vieira de Mello Chair. She has been working with refugee issues since 1999, and has been a Lawyer/ Protection Officer at the Refugee Reference Center of Caritas Arquidiocesana de São Paulo and a UNHCR-Brazil Consultant. She participates in

several national and international research projects and is a Member of IOM’s Migration Research Leaders Syndicate.